

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

March 20, 2003

A meeting of the Board of Environmental Protection was held on Thursday, March 20, 2003, at the Holiday Inn / Ground Round facility in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Ernest Hilton, Melford Pelletier, John Tewhey, Virginia Plummer, Richard Wardwell, Katharine Littlefield, Nancy Ziegler and John Marsh

Absent: Irving Faunce and Jean T. Wilkinson

Others: Dawn Gallagher, Commissioner
Peggy McCloskey, Assistant Attorney General
Cynthia S. Bertocci, Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 5:10 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Dawn Gallagher, Commissioner reports the following:

Natural Resource Agenda:

Governor Baldacci will be announcing his natural resource agenda this summer. The issues on the agenda (e.g. water withdrawal) will cut across agencies, and the Governor will be encouraging all state natural resource agencies to work together on these issues over the next four years.

Natural Resource Summit: In conjunction with the initiatives outlined in the natural resource agenda, the Governor will host a natural resource summit on March 28th. The goal of this summit is to bring about 50 industry representatives together to discuss ways in which the State can assist in revitalizing our natural resource based industries.

Department Update:

Pine Tree Waste: Paula Clark from the Department's Bureau of Remediation and Waste Management provided the Board with an update on the Pine Tree Waste transfer station project in Westbrook.

Pine Tree Waste (PTW) is about to begin construction of the waste transfer facility and has submitted an application to modify its permit. PTW is seeking a minor revision to its permit to allow consolidation of the office and maintenance buildings and to provide a performance bond for each phase of the project as it is undertaken, rather than a bond for the entire amount up-front. The proposed revision would reduce the 3-phased project to 2 phases and change the order of construction beginning with the office and maintenance building. All intervenors have been contacted and are aware of the proposed revisions to the permit.

Questions: Board member Tewhey asked the following questions: Why has PTW changed its construction plans? Why was the facility not built last year? Is it the Department's understanding that PTW is scaling down the size of the project? Will amendments to the permit impact the road improvements scheduled for this project?

Department staff do not know why PTW has decided to construct the office/maintenance buildings before the transfer facility. PTW apparently has a need for the office space prior to beginning the construction of the actual transfer facility.

Staff do not know why construction hasn't started prior to this year. The permit requires that construction within 2 years from the date the permit was issued, which would be April, 2003. The Department speculates that PTW may have concluded that it is economically better to combine the office and maintenance buildings and add a second story, as opposed to constructing separate office and maintenance buildings.

There are no changes to the road improvement portion of the permit. PTW has provided MDOT with the \$50,000 as required. PTW has also purchased adjacent parcels of land.

Board member Hilton asked if the delay in construction was the result of a change to the solid waste stream or a change in the need for the facility.

The Department staff does not know.

B. CHAIRMAN’S COMMENTS: The Board Chair commended staff on taking the initiative to provide an informational update regarding the Pine Tree Waste project.

C. EXECUTIVE ANALYST COMMENTS: Aquaculture. Cynthia Bertocci advised Board members that the reply briefs on the Department’s draft General Permit for Finfish Aquaculture have been received in accordance with the established deadline. Ms. Hanson shall provide copies to the Board at the end of today's meeting.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: Reviewed

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

The Board voted (8-0-0-2) on a motion to table consent agenda item 1 and directed staff to record in the minutes all motions and votes on a matter not just the final vote.

1. BEP MINUTES OF JANUARY 16, 2003

The Board voted (8-0-0-2) on a motion to approve agenda items 2 and 3.

2. BEP MINUTES OF FEBRUARY 6, 2003

3. BEP MINUTES OF FEBRUARY 20, 2003

4. The Board voted (8-0-0-2) on a motion to approve KEITH and DEBRA FEYLER, SHALLON PEASE, SHERRIL AREY, LEE AREY AND PETER AIKEN Cushing – Administrative Consent Agreement (BLWQ-Land)

5. The Board voted (8-0-0-2) on a motion to approve JACOBS EXCAVATING, INC., Dresden – Administrative Consent Agreement and Enforcement Order (BLWQ-Land)

6. The Board voted (8-0-0-2) on a motion to approve MEAD CORPORATION, Oxford – Appeal of Tax Certification by the Town of Mexico, Ratification of Consent Order (Office of the Commissioner)

III. Regular Agenda

1. WIDEWATER STILLWATER RETAIL DEVELOPMENT (re-open record / proposed for decision)

A. A motion to approve the application of Widewaters Stillwater for a retail development project in Bangor and direct staff to amend the draft proposed order to include the following additional conditions from the March 13, 2003 letter from Jeffrey Thaler:

(2) *“Requiring the applicant to provide the Department with a performance bond to ensure that pollution control plans are completed as approved;*

(3) *Requiring the applicant to comply with and not exceed the lighting standards set out in the IES Handbook, including but not limited to a specific commitment to turn off designated fixtures for specified times to reduce parking lot lighting to meet Handbook standards;*

(5) *Requiring the applicant to commit funding of \$30,000 over two years plus expenses for the staffing of a coalition effort for the long-term conservation of the*

Penjajawoc Marsh, as well as requiring the applicant over two years to provide in-kind contributions, including identification of property owners, maps, legal creation of a new non-profit corporation and negotiations with land owners; and (6) Requiring the applicant to fund up to \$20,000 for an Impoundment Study undertaken by the Dept. of Inland Fisheries and Wildlife staff, using Habitat Evaluation procedures, of the impacts of different water level regimes on the waterfowl and wading bird habitats, as well as the habitats of other species in the Penjajawoc Marsh, in order to determine if a water level control structure is desirable and, if so, where the structure should be located.”

failed (3-5-0-2): Board members Melford Pelletier, Katharine Littlefield and Richard Wardwell voted to support the motion. Board members Ernest Hilton, Virginia Plummer, John Tewhey, Nancy Ziegler, and John Marsh voted opposed. Board members Irving Faunce and Jean T. Wilkinson were absent.

- B. A motion by E. Hilton seconded by J. Marsh to reconsider the motion described above.. failed (5-3-0-2).

Board members Ernest Hilton, Katharine Littlefield, John Marsh voted to support the motion to reconsider. Board members Richard Wardwell, John Tewhey, Virginia Plummer, Nancy Ziegler and Melford Pelletier voted opposed. Board members Irving Faunce and Jean T. Wilkinson were absent.

- C. The Board voted (5-3-0-2) on a motion to direct the staff to draft an order denying the application of Widewaters Stillwater Development Company for a retail development project in Bangor finding that the proposed project does not fit harmoniously in the existing natural environment, the proposed compensation plan is not adequate to mitigate adverse impacts to wildlife and the Penjajawoc Marsh, lighting impacts have not been minimized to the fullest practicable extent, the proposed project is part of a subdivision and not all of the lots have been submitted for review and approval, the applicant has not provided adequate evidence of financial capacity, and the nature and number of issues proposed to be addressed through conditions is significant.

Board members Nancy Ziegler, Virginia Plummer, Ernest Hilton, John Tewhey and John Marsh voted to support the motion. Board members Katharine Littlefield, Richard Wardwell and Melford Pelletier voted opposed. Board members Jean T. Wilkinson and Irving Faunce were absent. Staff: Stacie Beyer, Bureau of Land and Water Quality.

The vote were taken pursuant to 38 M.R.S.A. Section 341-D, 481 et. seq. and 06-096 CMR Chapters 30, 371-378 and 500.